

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FEB 25 1974

DOCKET NUMBER 74-1060

SHERWIN S. MINKES,

APPELLANT

-VERSUS-

XEROX CORPORATION,

APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

SHERWIN S. MINKES,
APPELLANT PRO SE
P.O. Box 433
KENDALL, FLORIDA 33156

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SHERWIN S. MINKES,
APPELLANT

-VERSUS-

XEROX CORPORATION,
APPELLEE

CASE NUMBER 74-1060

GENTLEMEN:

I, SHERWIN S. MINKES, APPELLANT PRO SE,
OF THE COUNTY OF DADE MIAMI, FLORIDA 10590 S.W. 77 AVENUE,
AM APPEALLING THE DECISION OF THE HON. MORRIS E.
LASKER, U.S.D.J. OF THE U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK CASE NUMBER 73CIV
1781 MINKES V. XEROX CORPORATION, DECISION DATED
DECEMBER 12, 1973 IN WHICH HE DISMISSED THE CASE ON GROUNDS
OF STATUTE OF LIMITATIONS DEFENSE, ON THE GROUNDS THAT
THE CASE WAS PRESENTED TO THE U.S. DISTRICT COURT SOUTHERN
DISTRICT OF NEW YORK IN FEBRUARY, MARCH, APRIL, AND MAY OF 1970
THROUGH THE PRO SE CLERK BUT ~~DOE~~ ^{DUE TO} INSUFFICIENT
INFORMATION GIVEN ME BY THE PRO SE CLERK OF THE U.S. DISTRICT
COURT AND UNETHICAL AND ILLEGAL CONDUCT COMMITTED BY

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THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE XEROX CORPORATION'S MR. DAN DURANTE,
CUSTOMER SERVICE MANAGER, AT THE STATE
UNEMPLOYMENT INSURANCE HEARING IN THE STATE
OF NEW YORK, BOROUGH OF MANHATTAN, ON
JULY 23, 1970, PREVENTED ME FROM CARRYING
THIS CASE THROUGH DUE TO INSUFFICIENT FUNDS
AS STATED IN THE BODY OF THE COMPLAINT.
I WAS ALSO INFORMED IN MAY 1970 BY THE PRO
SE CLERK OF THE UNITED STATES DISTRICT COURT
THAT THE COMPLAINT WAS SENT TO THE XEROX
CORPORATION BUT THAT NO ANSWER HAD BEEN
RECEIVED BY THE COURT. I ALSO STATED
I WAS FURTHER HARRASSED BY MS. CHRIS
HARAN, CUSTOMER ASSISTANT, XEROX CORPORATION,
A WOMAN NAMED IN THE ORIGINAL COMPLAINT, AT
820 LEJEUNE ROAD IN THE AQUARIUS LOUNGE
IN MIAMI, FLORIDA IN FEBRUARY, 1973 WHEN
SHE WAS ACCOMPANIED BY TWO MEN AND ANOTHER

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THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WOMAN. FOR ALL OF THE ABOVE REASONS,
ANY ONE OF WHICH IS SUFFICIENT TO NEGATE
ANY DEFENSE OF STATUTE OF LIMITATIONS,
I, SHERWIN S. MINKES, APPELLANT, PRO SE,
ASK THAT THIS LAWSUIT FOR TWENTY FIVE
MILLION DOLLARS DERIVING FROM CHARGES
OF ASSAULT, BATTERY, CONSPIRACY TO COMMIT
MURDER AND ATTEMPTED MURDER AND
DIRECT VIOLATION OF ARTICLE I OF
THE AMENDMENTS TO THE UNITED STATES
CONSTITUTION GUARANTEEING FREEDOM OF
SPEECH AGAINST THE XEROX CORPORATION
VIA ~~THE~~ ITS AGENTS BE RETURNED TO THE
UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK FOR TRIAL.

SWORN TO THE 7th DAY OF JANUARY, NINETEEN HUNDRED SEVENTY FOUR
SHERWIN S. MINKES

County of DADE
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES JUN. 16, 1976
FLORENCE C. ALCARDI

Sherwin S. Minkes, PRO SE
P.O. Box 433
KENDALL, FLORIDA 33156

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SHERWIN S. MINKES,
APPELLANT

-V-
XEROX CORPORATION,
APPELLEE

DOCKET NUMBER:

74-1060

APPELLANTS AFFIDAVIT
OF SERVICE OF BRIEF
AND EXHIBITS ON APPELLEE'S
ATTORNEYS

I, SHERWIN S. MINKES, APPELLANT, PRO
SE, DO HEREBY CERTIFY THAT I HAVE
PERSONALLY DELIVERED ON THIS FIFTH
DAY OF FEBRUARY, NINETEEN HUNDRED
SEVENTY FOUR TO SIMPSON THACHER &
BARTLETT, ATTORNEYS FOR APPELLEE,
XEROX CORPORATION, AT ONE BATTERY PARK
PLAZA A TRUE COPY OF THE BRIEF FOR
APPELLANT AND COPIES OF THE EXHIBITS TO BE
USED FROM THE U.S. DISTRICT COURT S.D.N.Y.

I SWEAR THIS TO BE THE TRUTH, SO HELP ME GOD.

Sherwin S. Minkes, PRO SE
SHERWIN S. MINKES

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

SHERWIN S MINKES
PLAINTIFF

-V-

XEROX CORPORATION
ET. AL.
DEFENDANTS

CASE NO. 73 CIV 1781

JUDGE LASKER

PLAINTIFFS ADDENDUM
TO ORIGINAL COMPLAINT

SHERWIN S MINKES, PLAINTIFF, SUBMITS THE
FOLLOWING CHARGE OF ATTEMPTED MURDER AGAINST
THE XEROX CORPORATION CUSTOMER ASSISTANT
AND AGENT MRS JUNE WELD, A WOMAN NAMED
IN THE ORIGINAL COMPLAINT, TO MAKE MANIFEST
THE INTENT OF THE XEROX CORPORATION TO
MURDER THE PLAINTIFF TO A LEGAL CERTAINTY,
AND BY SO DOING FRAVE THE CHARGE OF CONSPIRACY
TO COMMIT MURDER AGAINST THE DEFENDANTS
THE XEROX CORPORATION ET. AL.

THE ATTEMPT WAS MADE IN FEBRUARY, 1970
WHEN THE PLAINTIFF WAS NO LONGER EMPLOYED

EXHIBIT A1

THE UNITED STATES COURT
OF APPEALS

for the
SECOND CIRCUIT

SHERWIN S. MINKES,
APPELLANT

DOCKET NUMBER

74-1060

-VERSUS-

XEROX CORPORATION,
APPELLEE

APPENDIX FOR THE APPELLANT

DESCRIPTION OF PAPER

COURT INDEX NUMBER

I. COMPLAINT

1

II. LETTER FROM S S MINKES
TO JUDGE LASKER dated
JULY 26, 1973

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III. LETTER TO JUDGE LASKER
FROM S.S. MINKES dated
OCT. 8 '73

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IV. MEMORANDUM #40127 by JUDGE LASKER

7

V. INDEX TO RECORD ON APPEAL

A

SHERWIN S. MINKES, PRO SE

P.O. BOX 433

KENDALL, FLORIDA 33156

TELEPHONE: 305-665-1941

United States District Court

for the Southern District of New York

SHERWIN S. MINKES

73 CIV. 1781

- V -

XEROX CORPORATION

- ① I am suing because of threats and Knifing in lower back portion of my brain by MRS. KATHLEEN PALMER, customer assistant of XEROX CORP. and Knifing in lower back of MY BRAIN by JACK LEVIN, ZONE SALES MANAGER OF XEROX CORP, BETWEEN 3:00 P.M. AND 5:00 P.M. ON WEDNESDAY, DECEMBER 17, 1969 when I was an employee of XEROX CORP with the title meter card coordinator.
- THE THREATS began after MR. GEORGE BLOOM, ZONE ADMINISTRATIVE MANAGER gave a 2 finger signal to GERRI WOLFE, customer assistant, in NOVEMBER, 1969 in the office at 200 East 42nd Street saying "I don't want to take that (looking at me) up there (meaning 666 FIFTH AVENUE where we were moving after JAN. 1970) GERRI CAN YOU TAKE CARE OF THAT?" GERRI WOLFE LOOKED AT ME AND NODDED YES. THREATS WERE MADE BY DAN DUARANTE, AN OFFICE MANAGER, AND CHRIS HAAAN, CUSTOMER ASSISTANT, SAYING "YOU'D BETTER SHUT YOUR MOUTH" TO ME. RAY CLYNE, SALES MANAGER, BROKE UP A CARD BOARD BOX and looking at me said "If there's a fourth your the fifth."

①

E. C. V. R. C. K. R.

Deputy Clerk.

I also allege a direct connection between

Xerox Corporation and the Knifing in the upper
back left portion of my brain by MRS TOBY
KATZ at ~~MINNEAPOLIS~~ 5214 12th AVENUE
ON FRIDAY EVENING DECEMBER 19, 1969 between

7:00 AND 9:00 P.M. in the presence of her

HUSBAND MR. REUBEN KATZ while I was SITTING

AT THE KITCHEN TABLE. SHE DID THIS AFTER

A GOOD BROKEN RING SIGNAL ON THE TELEPHONE.

DEBBIE, A CUSTOMER ASSISTANT AT XEROX CORPORATION,
made mention that this would happen to me

only 2 weeks before at 200 E. 42nd

STREET in the office of XEROX CORP.

I WAS FURTHER ATTACKED ON JANUARY 16, 1970

by ~~Adrian~~ ^{Kirk} at 666 Fifth Avenue, NEW YORK CITY with
a sharp instrument entering the lower
back portion of my brain at about
12:00 P.M. KAREN ETKIND, GERRI WOLFE
AND KATHLEEN PALMER, all customer
assistants were watching this.

THE BLOW BY MRS TOBY KATZ XNOBBED
OUT THE REPRODUCTIVE FACILITY OF MY
LEFT BRAIN WITH MY RIGHT TESTICLES.

THE WITNESSES TO THE ATTACK BY KATHLEEN PALMER, AFTER LEAVING THE OFFICE OF MR RAY CYNE, WERE JODY WHITESELL AND JUNE WELD CUSTOMER ASSISTANTS AT 200 E. 42ND ST.

The witness to the cutting of the back of my head by JACK LEVIN JUST BEFORE 5:00 P.M. DEC. 17, 1969, WAS MR ^{JOE} ~~BROOKHOLME~~ MCGOVERA, SALES MANAGER.

I am suing for TWENTY FIVE MILLION DOLLARS

- ② I FILED THE COMPLAINT AND SUIT WITH THE U.S. DISTRICT COURT IN MARCH, APRIL AND MAY OF 1970 but didn't have the money to pursue the case.

The COURT HAS JURISDICTION BECAUSE THIS OCCURRED IN NEW YORK CITY WHILE I WAS A RESIDENT OF BROOKLYN, NEW YORK 353 EAST 34TH STREET, AND THE LAWSUIT IS OVER \$10,000.

- ③ SHERWIN S. MINKES
10590 S.W. 77 AVENUE
MIAMI, FLORIDA 33156

- ④ XEROX CORPORATION
666 FIFTH AVENUE
NEW YORK, NEW YORK

- ⑤ 25 million ^{DOLLARS} ~~would~~ be remedy for this civil action against XEROX CORPORATION

THE PRINCIPALS IN THE CASE

ARE-06000000000000000000 XEROX CORPORATION
666 FIFTH AVE

- ① GEORGE BLOOM, NOW AN EMPLOYEE OF N.Y.
ITT
- ② DAN DURANTE NOW IN
XEROX - WHITE PLAINS, NEW YORK
- ③ BILL HAGER - THEN ASST OFFICE MGR
XEROX - WHITE PLAINS, NEW YORK
- ④ KATHLEEN PALMER - CUSTOMER ASST (CA)
- ⑤ ADRIAN KARLE - CA - XEROX
- ⑥ KAREN ETKIND - CA - XEROX
- ⑦ JUDY WHITESELL - CA - XEROX
- ⑧ GERRI WOLFE - CA - XEROX
- ⑨ CHRIS HARAN - CA - XEROX
- ⑩ RAY CLYNE - SALE MANAGER - XEROX
- ⑪ GMR MCGOVERN - SALES MANAGER - XEROX
- ⑫ MRS TOBY KATZ
1425 51ST STREET APT. F4
BROOKLYN, NEW YORK
- ⑬ MR. REUBEN KATZ
1425 51ST STREET APT F4
BROOKLYN, NEW YORK
- ⑭ DEBBIE - CA - XEROX CORP.
- ⑮ JUNE WELD - CA XEROX CORP.

SWORN TO BEFORE THE THIS

174. DAY OF April, 1970

I swear in the name of God this
is the truth

Sherwin S. Minke
SHERWIN S. MINKE

Herwin S. Minkes

17540 S.W. 1st Ave.

My dear, I carried a 3550.

(— ۱۱۷ —)

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
~~NEW YORK, NEW YORK 10002~~

RE: 73 CIV 1781

YOUR HONOR JUDGE LASKER.

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JAN 14 1974

I AM IN RECEIPT OF A LETTER
DATED JULY 23, 1973 FROM THE
CHAMBERS OF JUDGE LASKER
ASKING XEROX CORPORATION IF
THEY WISH TO FURTHER EXPAND
ON THE POINTS OF DEFENSE
TO AVOID GOING TO TRIAL IN
OPPOSITION TO MY MOTION FOR
TRIAL. THE LETTER HAD A
PRINTED NAME CAROLINE MARTIN
LAW CLERK TO JUDGE LASKER. I AM
NOT CERTAIN WHETHER JUDGE LASKER
OR CAROLINE MARTIN ORIGINATED
THE LETTER. BE THAT AS IT
MAY, I, SHERWIN S. MINKES
STILL MAKE A MOTION FOR TRIAL
ON THESE GROUNDS IN ANSWER TO
MAIN POINTS OF DEFENSE BY XEROX
CORPORATION.

FIRST DEFENSE - ON LACK OF JURISDICTION:
MAIN CRIMES TOOK PLACE IN NEW YORK
CITY AND I AM SUING ON DIVERSITY
FROM FELONIES CHARGED AND FILED
WITH DISTRICT ATTORNEY'S OFFICE
OF NEW YORK AND NEW YORK
CRIMINAL COURT AND ~~BROOK~~ OF
NEW YORK CITY AND BROOKLYN, NEW
YORK.

14 SECOND DEFENSE - COMPLAINT FAILS TO
STATE CLAIM UPON WHICH RELIEF

CAN BE GRANTED? COMPLAINT STATES:
I AM SUIING FOR 25 MILLION DOLLARS
FOR THREATS ON MY LIFE BY
CERTAIN NAMED AGENTS AND
EMPLOYEES OF XEROX CORPORATION
FOLLOWED BY ATTACKS ON ME
BY NAMED INDIVIDUALS WITNESSED
BY NAMED INDIVIDUALS OF XEROX.

(C) THIRD DEFENSE: THIS ACTION
BARRED BY APPLICABLE STATE
OF LIMITATIONS; THE SUIT
WAS FILED IN APRIL OF 1973
WITHIN 3 YEARS OF THE STATE
UNEMPLOYMENT INSURANCE
HEARING IN NEW YORK CITY
IN JULY, 1970 where Mrs.
JUDY WHITESPELL UNDER
OATH TESTIFIED TO THE TRUTH
OF MY CHARGES AGAINST
XEROX CORPORATION EMPLOYEES.
ALSO AS LATE AS FEBRUARY, 1973
AT THE AQUARIUS LOUNGE
IN MIAMI, FLORIDA AT 820 SW
42nd AVENUE I recognized a
woman who was CHRIS HARAN, a woman
OF XEROX NAMED IN MY COMPLAINT, HARASSING
ME WITH OTHER MEN UNKNOWN TO ME
AND ANOTHER WOMAN. ALSO THIS
COMPLAINT WAS FILED IN APRIL OF 1970 ^{PROSE} IN CLERKS OFFICE.
TRULY YOURS

SHE ROBIN S. MINKES
c/o Sharon S. Minkes

10590 SW 77 AVE.
MIAMI, FLORIDA
33156

SHERWIN S. MINKES
PLAINTIFF

V.

XEROX CORPORATION ET AL
DEFENDANT

CASE NO. 73 CIV 1781

JUDGE LASKER

DEPENDANT NAME SHOULD READ XEROX CORPORATION ET AL
BEING THAT THE DEFENDANTS LAWYERS

SIMPSON THATCHER & BARTLETT SEEM TO BE PREOCCUPIED
WITH STATUTE OF LIMITATIONS AND SEEM TO BE
CONFUSED AS TO THE CHARGES FORTHWHAY
THE 25 MILLION DOLLAR LAWSUIT DERIVES
THE FOLLOWING IS SUBMITTED BY THE PLAINTIFF
FOR EXPANSION AND CLARIFICATION OF CHARGES
THE LAWSUIT DERIVES FROM CHARGES OF MENTAL AND
AND CRUELTY AND INJURY
PHYSICAL TORTURE, BY THE XEROX CORPORATION AND
CONSPIRACY TO COMMIT MURDER AGAINST PLAINTIFF

SHERWIN S. MINKES OVER A PERIOD OF FOUR YEARS

FROM MAY, 1967 TO FEBRUARY, 1972 IN MIAMI, FLORIDA
AT 620 LESBONE ROAD WHICH PLAINTIFF WAS HARASSED
BY MRS CHRIS MARRAN WHO VIOLATED HIM IN VIOLATION OF
ARTICLE 2 OF THE AMENDMENTS TO THE U.S. CONSTITUTION
SHERWIN S. MINKES IPAD 58

FILED SEP 10, 1972
SHERWIN S. MINKES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

SHERWIN S. MINKES,

Plaintiff,

-against-

XEROX CORPORATION,

Defendant.

-X

APPEARANCES:

SHERWIN S. MINKES, ESQ.
P. O. Box 433
Kendall, Florida 33156
Attorney Pro Se

SIMPSON THACHER & BARTLETT, ESQS.
One Battery Park Plaza
New York, New York 10004
Attorneys for Defendant
Of Counsel: ROLO W. REED, ESQ.

#40127
73 Civ. 1781

MEMORANDUM

DEC 14 12 37 PM '73
U.S. DISTRICT COURT
S.D.N.Y.

RECEIVED
DEC 19 1973

7

This action seeks damages for injuries and mental distress allegedly suffered by plaintiff on three occasions in 1969 and 1970, when employees of defendant are claimed to have "knifed" and "attacked" him. Defendant has moved to dismiss the complaint as time-barred by the Statute of Limitations.

Plaintiff, who appears pro se, does not set forth in his pleadings the basis for our jurisdiction, but since he and defendant are residents of different states, we will assume he alleges diversity jurisdiction.

Since all the acts complained of are alleged to have occurred in this state, New York law establishes the applicable limitations period. Guaranty Trust Co. v. York, 326 U.S. 99 (1945), Gleason v. United States, 458 F.2d 171 (3rd Cir. 1972).

It is unclear what theory of liability plaintiff alleges but a generous reading of the complaint suggests that the action sounds either in assault and battery, or personal injury resulting from defendant's alleged negligence. The New York Statute of Limitations for an assault and battery is one year, C.P.L.R. §215(3), and for an action to recover on a personal injury, three years, C.P.L.R. §214(5).

Since the most recent act complained of allegedly took place on January 16, 1970, and the complaint was filed over three years later, on April 23, 1973, the action is time-barred under either theory. We note that plaintiff filed with the court, on October 9, 1973, a document for the declared purpose of "expansion and clarification of charges, which complains of additional acts by defendant allegedly occurring in 1973. Since this paper was filed six months after defendant's answer, and since plaintiff has not moved this court to amend and supplement his complaint pursuant to Rule 15, Federal Rules of Civil Procedure, we decline to consider it to be an amendment to the complaint.

For the foregoing reasons, the motion to dismiss is granted.

It is so ordered.

Dated: New York, New York
December 12th, 1973.

Wm. J. Carter
U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SHERWIN S. MINKES,

Plaintiff

vs

XEROX CORPORATION,

Defendant.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK.

CASE NO. 73 Civ 1781

JUDGE Lasker

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